

QIKJS-Part.VI.B

Qualitative Inquiry of Korean Judicial System

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The insight needs to be reiterated that the trait of professionals would be less susceptible of radical action or revolutionary thinking mainly from their education or social status. It implies that they could convert to recognize the governmental rationality more susceptibly or as an effect of professional terms and moral attributes. A deviant case is not absent, however, for example, the continuing struggle on the Judicial Exam, independent operation of law professors association failed of 2007 law school bidding, and gender or nepotism issue of profession. The Marxian thought is no less relevant in terms of distinct professionalism although he is a pure economist given its principal focus on the capital itself. His thought can be traced the notion of Guild, or professionals, the kind of para-materials and element of his thought on political economy. Since he introduced the working class beyond the nature of capital, the professionalism could center on his views of humanity and society. However, he has no chance to appreciate many new elements. His lacking to detail on the variety of professionals or other elements of society as well as new phenomenon would be one reason to generate a plenty of his protégés on the critical theory, such as bio-politics or normativity on communicative action, as well as new incorporations into the capitals or bourgeois, such as technology or feminism. In view of specter over the capitals and society, the community of law people will certainly be a good experimental lab in various terms. It would have an attribute as one of knowledge economy, and their asset would be a kind of meta-capital most distinctively along the medial doctors, income clergyman, pharmacists, accountants, and other licensed professionals. One court opinion can single out this attribute in the revocation of license case,

“The due process of law must be ensured to revoke a ‘license or degree’ since it is one of property right within the constitutional protection...”

As we view the government would be unique actor to regulate the market, the court itself a creator of capital or property right, and acts as a posterior role to deal with the legality of specific public policy (Kim, 2014c; 2015a,c). Notwithstanding their importance as a market regulator, they are either a part of legal service market or the kind of public office to interact with the transformation of market or capitalism. That would simply be an assumption of professionalization thesis that integrates the whole of three professions as unitary and with coherence. The training or education has to be common, and the judges should have a career of years or decades to be

selected. This would make an effect to vitiate their Marxian consciousness, and accept a habitus, such as the feudalism ethos on the bench or general agility as to the democracy cause within the Korean politics. Now their epistemology is the type of modern hybrid, and reality would be a very prototype of socialist production. First, it would be distinct that the talent or legal knowledge along the character and fitness is very strand to define their professional success. They have to be social to deal with the clientele, and practice the legal principle as an alternative of economic or political justice. Beyond the license on state or national bar exam, the degree institution may be competitive to give a prestige to their graduates. Second, the hourly charge on the big law firms or partnership type of management also represents its social character of production, a very distinct form of work arrangement that perhaps can be an ideal type of defunct Marx. Third, the new tendency of public law firms funded by the government, at least in Korea around the transformative period, can erode the traditional character of lawyerly service that is private and client-specific or patron based-operation. Nevertheless, the external examination of legal service market can see it more competitive and characteristic on the income disparity of lawyers. Their epistemology or consciousness gradually develops to respond with the new terms or phenomenon of society. In fact, the gender capitalism on this profession had only be a satire if only six new attorneys among 300 annually around 1980's. Through the decades thereafter, now the female attorneys could account for the half of new attorneys because of increasing number of exam quotas or new law school system. Their politics of identity can take a stage, perhaps increasing over the future. KBO recently prepared an exchange with the Japanese peers with the symposium on the topic of female attorneys. It could expand, and the implication is Japanese-friendly of Korean intellectuals when they are on cultural issues.

“It was a precious opportunity to think about the clientele of female lawyers and their income structure. It is truly our issue that may not be chically dealt (laughter)..We deeply affected that any systemic research slot should be operating that the issue is really sensitive and sophisticated....I was excited to get to know the Japanese peers in the symposium... We arrived at Haneda Airport, and the lawyer building of Japan was a spectacle as compared with Korea's. The Symposium was sectioned into two that the discussion should rotate on panels of each nation... Park presented the topic, 'Reality and Statistics of Female Lawyer in Korea,' and Yang with the 'Female Lawyers in adjacent area of legal practice'...Other panels presented their preparations that touched on the life of professional and familial obligations, and strife to meet the social demands.....”

Definite to reject the violent revolutionism or fatal prophecy leading to defy the standing constitutionalism, the trait to seek a self identity or political resort toward himself or their association seems inchoate as involved with female lawyers in Korea. Their current struggle would seem on the fair adjustment between the market and their familial role, especially on the child raising. Their issue of job opportunity seems traditional that calls to expand their prospective posts with the relating field of practice, such as national assembly and bench or KPOs. It needs to be remarked that the new law schools provide many recruitments with 31 new female professors of law. The election law was revised to favor female candidates for the election of KNA, which is the influence of modern constitutionalism on equality or affirmative action that they are responsible for. The summary statistics from the symposium can be seen below.

Areas of Interest	Korea	Japan
Share in Proportion	Year 1999: 40/1.15 % Year 2008: 820/9.3%	Year 2001 : over 10% Year 2008: 3,599/14.4%
Type of Practice	Law Firm 415 Solo Practice: 338 Joint Offices: 51 Limited Liability Corporation: 16 In-House Counsel: 50	Law Office : 14% among total 23,280 Law Firm : 16.8% among total 1,376 Funded Law Office: 17.9 among total 84 Corporate Counsel: 40% among total 243
Type of Professions	Registered Attorneys Judges Public Prosecutors Military Prosecutors Law Professors National Assembly Women	Judges (15.4%) Public Prosecutors (12.2%) Year 2007 :Judges (36.4%)/Public Prosecutors (34.5%)/Attorneys (22.45) ● Increasing of Female Share
Age Statistics		A fair majority on their Thirties': 1,612 among total 3,599 female lawyers (44.7%)
Career Role		Career 5-10 years: Manager Role (Male-72 %/Female-54%) Career Less Than Five Years: Non-Manage Role (Male-72%/Female 83%)
Weekly Work Hours		● Over age 40 : Same between two sexes ● Below age 40: Male-60 hours/Female 55 hours

Income Structure		<p>Patron Networks : Male 64.2%/Female 34.6%</p> <p>Median Sales : Male 2,400 yen/Female 1,398 yen</p> <p>Median Income: Male 1,200 yen/Female 800 yen (years of practice and child raising as variables)</p>
Special Treatment		<ul style="list-style-type: none"> ● Exemption from the Required Fees on Birth Leave Nationally and Locally ● Other Public Offices: 23 among the total of 61 ● Law Professors: Less than 10%)

The field data on the internet sources and interview result generally confirms the thesis that the liberalization of market increases the competitiveness of service providers in the market, size effect of production as well as the intensification of income disparity. In view of topic, the particulars can be found on the preference of new attorneys among the three professions and the rapid occupancy of domestic legal service market despite the limited role of foreign law firms because of special act. The new attorneys in the past paradigm of KJS had mostly favored to take the post in the bench as a judge. This could not be legally possible given the new policy of unitary and coherent judicial system. They need a career years as a clerk or practicing attorneys that the job preference for new attorneys may split as a high salary law firm attorney and prosecution officer. The prosecution officer would be prospective with the feel of settlement and moderate salary, while the law firm attorneys may be nerve-jangling to meet the expectation of high salary. The role as a law firm attorney, nevertheless, seems attractive at this global age and offers an opportunity to develop on the specialization and deep manner or knowhow on the legal service market and global economy. The pros and cons would be obvious in terms of each lawyer's career path. Given the vast interviewees stressing a specialization as a critical strategy, we can state that the professionalization thesis seems very appropriate to describe the paradigm of law people and now have to embrace a lifelong learning and formal or informal context of learning through CLEs, for example. The phenomenon, "rich gets richer and poor

gets poorer” tends between the corporate counsel lawyers in big law firms and solo practitioner as the statistics implies.

	Total of Legal Service Market	Low Status Attorney	Big Law Firms
Number of attorneys	<p>Year 2009: 27,212</p> <p>Year 2013: 33,708 (23.9% increase)</p> <p>2,000 new attorneys yearly</p>	<p>Low status lawyers are not rare that could not afford the rental fee of office. Some lawyers tried to borrow money in an indecent manner or embezzle the client deposits who were referred to the disciplinary board. Other lawyers from new law school suffer an implied discrimination from the law firms. Depraved lawyers could shift to work as low rank public officer and take another very competitive national exam for the posts.</p>	<p>The sales amount of big law firms grows annually, which shows a stark contrast. The average sales amount of six largest law firms increased from 740,000 thousand dollars per attorney to 548,200 thousand dollars in 2013. Kim & Chang, the biggest law firms in Korea, reported 740,000 thousand dollars per capita in 2013.</p>
Sales Amount	<p>Small increase or decrease</p> <p>Year 2009: 3130800 million dollars</p> <p>Year 2010: 2908100 million dollars</p> <p>Year 2013: 3618900 million dollars</p> <p>(15.6% increase)</p>		
Per capita sales	<p>Year 2009 :115,060 thousand dollars</p> <p>Year 2013: 107,390 thousand dollars</p>		
Per capita paid cases	Year 2007 : 52.2		

	Year 2013: 33.3		
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The trend identified within the legal service market in Korea will not change soon or time according to the future schedule of more liberalization since the western counterparts will seek a level playing field and fair competition. The law firms of US and UK already established with reputation and international competitiveness are expected to surge to exploit the domestic market. Korea will liberalize the market with EU countries as agreed on the FTAs. The schedule of liberalization will be made complete when the market is open to the US in 2017. One law professor commented,

“Now the lawyers in Korea could neither be a nerd of traditional privileges on the domestic market nor shrug free from the global challenge. Worse, only around ten big law firms can be competitive among the all of 1080 law firms...Specialization and size economy are truly their small window to overcome it, in which understanding the market or clientele would be the kind of best strategy, such as expansion into oversea Korean businesses or expertise to accommodate the potential law consumers....”

The influence of global capitalism is institutionally represented by the WTO commitments, in which the GATs envisaged the level playing field within the global service market. The negotiating parties of Uruguay Round agreed by inaugurating a new realm of multinational trade agreement, GATs in addition to the Trips. The national policy along the civilian transformation naturally took the stage to interact with the econo-political and institutional transformation on the capitalism. The Agreement is principled and expected to staff with the progress of individual member states on request and offer process with other member countries individually. The FTAs with EU and US, and other slot of international negotiations by Korean government had shaped the terms and conditions of liberalization on the domestic service market including legal service. The field evidence corroborates that the domestic turf and resistance tend to be stronger around the sectors, such as medical or legal service industry. For example, the progress was disputed by the major influential diplomats as illustrated before, but the stage is now on the process of stream as scheduled until 2017. Given any more resilience and barrier around the global countries over various service sectors, the smooth progress can generally be seen as to vindicate the rising prestige of Korean nation. The econo-political impact truly geared up to transform the lawyer of traditional notion and social privilege toward the profession of paradigm in terms of ...’s theory on the sociology of profession. Nevertheless, the expense to restructure the legal service market and adaption of new lawyers in view of their socio-economic or cultural struggle is never such little.

One year period even reshaped the landscape of market occupancy among the major law firms in Korea.

Rate of Market occupancy (%) – The first quarter 2013	Rank	Rate of Market occupancy – The first quarter 2014
36.2	1	31.9
30.6	2	27.8
28.7	3	20.9
10.9	4	20.9
7.0	5	18.7
7.0	6	13.5
7.0	7	7.0
5.0	8	7.0

The impact of liberalization resulted to improve the employment issue of new attorneys, and the preference for the first time job application turned Americanized. The super-duper law firms recruited far more than new attorneys in 2007, the year of FTA conclusion with the US. The new type of employment, an in-house counsel, became a strong alternative that the firms prefer to deal with the need of legal counsel. While the rule of law concept is volatile to incur challenge against the public organizations, it is not surprising that they began to employ their own paid counsel from the new attorney market. The JRTI provides a career service for the new attorneys. One source reported,

“Six major law firms announced their plan to recruit over 130 new attorneys, a remarkable increase from 93 last year...Pacific 25 from 13, Kwang-jang 20 from 18, and Kim & Chang, Sejong, Yoolcheon, 30-35 % increase in average....At total, all law firms are now a major employer of new attorneys, 180 in the year 2005, 181 in the year 2006, and 273 in the year 2007... In 2006, the unemployed lawyers were as many as 312, 32 % of total graduating class...The impact of liberalization is obvious...”

The field evidence generally supports the market liberalization with the FTA between Korea and US as a principal cause for the change. One interviewee, a recent JRTI graduate, testified that his most competitive peers show a high preference for the highly paid corporate counsel in the big law firms. They no longer see the prosecutors or judges as absolute for their career choice. It corroborates the increasing ethos of law people as an internationalist since the law firms are the kind of vanguard to learn the global market and relevant skills or knowledge. The law firms actually conceded of a crisis upon the conclusion of FTAs with the US that the

enlargement and specialization are necessary to compete. The socio-cultural or economic epistemology among the professionals and people at large tend to convert to accept the theory that the influence created to bring the societal transformation. The lawyers now perceive them as an internationalist than nationalist or privileged profession of feudal culture. The government including the Court and KPO, as well as the big law firms would spend much money for the one year study abroad program for their staffs. This would be a unique culture for the underdeveloped countries given the law professionals of US had no such opportunity from their workplace generally. It was a paid basis and expended from the tax money, but the government gladly spent it while the congressmen on paid oversea travel was reported as the kind of nepotism implication. The firms or businesses sought to purchase their special knowledge by recruiting them as an in-house counsel. Only 14 had taken that job in 2001, which increased for 55 in 2005, and steadily over 40 annually since then. While the economy is globalized, the firms or businesses has an increasing demand of legal counsel, especially on the international contract law or corporate law. Nevertheless, it is conspicuous that Sam Sung, a biggest conglomerate in Korea, prefer to employ a high rank prosecution officer formerly, which implies of nepotism in the meaning that they are specially paid, and in other implication that Chaebol tends to fear of legal retaliation against their government-shield privileges and possibly unclean business support. On the other, the new attorneys defend the social justice that the nation became woven with the environmentalism or consumerism as their increasing policy area. The past developmentalist drive no longer could be a face of nation as consonant with the type of western states and international progress. This could offer a backdrop that many public cause organizations, for instance, Korean consumer protection recruit more than new attorneys annually. The total increase is notable, 25 in 2003 and 74 in 2007.

Two distinct patterns of stories can explain the typology of Korean judicial system that implicate the thesis of professionalization and political or bureaucratic theory about the lawyers. Often the lawyers in the advanced country notably with the US case had been described in terms of income or their political forge onto the domestic politics. In other words, they generally would not be depicted as extraordinary as a human right, great political dissenter or organization reform advocate. A great clergyman, such as Martin Luther King, may be the sort of social leader or Justice Holmes could be an ever great dissenter but in his professional competence or prestige as a top adjudicator. Some notable legal academicians may be any geek with their critical legal or race theory that would be revered. They would not sacrifice, however, in exchange with their social respect as a critique or dissenter. The post-colonial state often would reveal the myth of critical social leadership from the profession. The exciting finding through my GT research is that the pattern is notable with the different stories before and after 1987 constitution, which is despite their common struggle for the cause of lawyerly Republic or democracy. They had been persecuted commonly, but the recovery of their public honor had not been made to the post 1987 activists. Another difference is that the pre-1987 activists are largely known as their case struggle or political participation while the post-1987 activists tend on the organizational reform itself more specifically or informally. They would even be seen as the type of whistle blower in worse sense, but revered as courageous

to take a risk of career disadvantage. Within the public minds, the pre-1987 activists incurred an impression that they would be a national hero to struggle with the authoritarian governments. A number of story books and basic materials or text books of Korean legal history course in the colleges and universities simply evidence the pattern of difference that can be compared with the past five judges illustrated during the post-1987 constitution (Kim, 2014a,b; 2015b,d). A book corner of one major newspaper excerpted the storybook of one preeminent activist lawyer,

“Han, long devotees to the human right and social justice over 50 years since 1965 published his story book entitled ‘Modern Korean history with the court cases...He had two occasions of imprisonment for his activism, and served as a National Comptroller later of his career in the post-1987 government ... He had a deep remorse for the execution of college student on politically influenced courts at that time...When he was escorted to the execution room, I was a shame to sleep at the corner of detention office....It was only a capital punishment although many of my poor clients had been sentenced guilty...Korea is really particularized that two presidents, Chun and Noh, were endowed a death penalty, while the incriminated politician can become a president like Kim. This vortex and chaos seem a progress of history as transformative....”

Against the post-1987 activists, they are viewed as an expert on cause, and their destiny should be determined by themselves. This finding can support the thesis of difficulties or tacit knowledge of contemporary bureaucracy, which provides a discourse of slim theatre on the possibility of politics dealing with the expert groups. The public became to take them no longer a democracy hero or psychedelic, but has an expectation as an expert that must be subject to the internal ethics or professional terms more than their splendid cause. They rather get instant to share them with an image of possible discipline, less as a public activist.¹

Therefore, our finding could support that the phenotype of KJS or PPKJS have a divergent character affected by aspects of profession. It would be feudal or rich with the classic culture of professions in some dimension, political in hard times, or socio-economic and cultural to deal with the market and economic sphere of interested actors or stakeholders. The thesis of professionalization can be of any primary importance to understand the profession given its root origin and more importantly with the salient reality over the post-1987 transformative period. In other words, the modern professionalism is lately systematized in Korea or during the progress toward a better paradigm by the interested actors or organizations. The grading system of KBO simply would be one effort to check on the professional ethics, and the exercise of professional discipline on the corrupt former officers or attorneys evidences the intensification of professionalism by the KBO. The scheme is not only disciplinary, but also prize the high grade judges by selecting top ten judges.

¹ Several judges including Seo Ki ho served as a judge, who continued to play as an internal critic for the illegitimate or unjustifiable court policy and practices. Seo was offered a seat of congress as a matter of Korean election law, and other judges would remain in the bench with no public support. The post-1987 incidents of this sort had gone in this way meaning less political or remunerative with the public highlight than their 1987 activist peers.

This implicates the professional network tend to be more active to communicate much more than the past, and the kind of process as Habermas pivoted on his theme of communicative action for the post-Marxian critical social theory. Given the concept of knowledge economy or modern professionalism essentially intertwined with the notion of Guild, we would probably be interested if Marxist fatalism would possibly be their option or at least implicit into their epistemology. However, their socio-cultural or view of econo-political theory is more than proximate with the concept of national or communal biology that they take a part of it as constituted other than reconstituted. The radical view of alteration or reconstitution would not properly explain the phenomenon that is occurring in the profession.

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